

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JAMES GILLIAM, Individually And On Behalf Of
All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

BOGATIN FAMILY TRUST, Individually And On
Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

CYNTHIA A. BENNETT and GUY E. MILLER,

Plaintiffs,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

[Caption continues on next page]

**INDEPENDENT TRUSTEE DEFENDANTS' RESPONSE
TO NOTICE OF PENDING MOTIONS IN RELATED CASES**

GHASSAN J. AWALI, et al., Individually And On
Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

Civil Action No. 04cv11709 (MLW)

WILLIAM S. GROESCHEL, Individually And On
Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

Civil Action No. 04cv11735 (GAO)

NANCY HAUGEN, MICHAEL F. MAGNAN,
KAREN L. MAGNAN, ROSE M. IANNACCONE,
PRESLEY C. PHILLIPS, ANDREA M. PHILLIPS,
and CINDY SCHURGIN, for the use and benefit of
FIDELITY MAGELLAN AND FIDELITY
CONTRAFUND,

Plaintiffs,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

Civil Action No. 04cv11756 (MLW)

[Caption continues on next page]

DAVID O. FALLERT, Individually And On)	
Behalf Of All Others Similarly Situated,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 04cv11812 (MLW)
)	
FIDELITY MANAGEMENT AND RESEARCH)	
COMPANY, et al.,)	
)	
Defendants.)	

Defendants J. Michael Cook, Ralph F. Cox, Robert M. Gates, George H. Heilmeier, Donald J. Kirk, Marie L. Knowles, Ned C. Lautenbach, Marvin L. Mann, William O. McCoy, Gerald C. McDonough, and William S. Stavropoulos (collectively, the “Independent Trustee Defendants”)¹ submit this response to the Notice of Pending Motions in Related Cases filed on November 17, 2004 by certain plaintiffs (the “Notice”).

The Independent Trustee Defendants join the Fidelity Defendants in not opposing the consolidation of the *Gilliam*, *Bogatin*, *Awali*, *Groeschel* and *Fallert* actions (the “Revenue Sharing” cases), but opposing the further consolidation of those five actions with the *Bennett* and *Haugen* actions (the “Excessive Management Fee” cases).² Plaintiffs in the Excessive Management Fee cases, like the Independent Trustee Defendants and the Fidelity Defendants, also oppose consolidation of these two groups of cases. The Independent Trustee Defendants

¹ Plaintiffs have indicated that their proposed amended complaint will not include currently named defendant Thomas R. Williams, a former Independent Trustee who was not served and is deceased.

² The Revenue Sharing cases were recently reassigned following recusal by Judge Stearns. (*Gilliam* and *Bogatin* are pending before Judge Gertner; *Groeschel* is pending before Judge O’Toole; and *Awali* and *Fallert* are pending before Judge Wolf.) Both Excessive Management Fee cases are pending before Judge Wolf.

make this submission to stress their particular interest in avoiding the consolidation of the two groups, because such a consolidation would unconstructively draw them into a litigation in which they are not parties.

The Independent Trustee Defendants are present and former trustees of the more than 200 Fidelity mutual funds on whose behalf the Revenue Sharing cases are purportedly brought. They have been named as defendants in all of the Revenue Sharing cases, but are not named in either of the Excessive Management Fee cases. Consolidating these groups of cases would consequently cause the Independent Trustee Defendants to become involved in a separate set of litigation claims as to which they are not named as defendants and are not subject to liability. Since the Independent Trustee Defendants intend to move to dismiss in whole or in part the actions in which they have been named, the proposed consolidation could further prejudice the Independent Trustees by keeping them in a litigation to which they are not now and should not become parties.

This potential unfairness to the Independent Trustee Defendants thus provides a further reason to reject the consolidation of the Excessive Management Fee cases with the Revenue Sharing cases.

Dated: November 30, 2004

Respectfully submitted,

/s/ Sandra Sue McQuay

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